

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GRANT DAVIS,

Petitioner,

v.

Case No. 10-C-0524

JUDY P. SMITH,

Respondent.

ORDER GRANTING RESPONDENT'S MOTION FOR ORDER FOR CONDITIONAL
WRIT (DOC. 77), AND DENYING DAVIS'S INEFFECTIVE ASSISTANCE OF
COUNSEL AS TO THE PRELIMINARY HEARING FOR THE REASONS SET FORTH
IN THIS COURT'S ORDER DATED MARCH 30, 2015

On March 30, 2015, this court denied Grant Davis's habeas petition challenging a June 8, 2006, administrative order revoking his parole. After Davis filed an appeal, the respondent reconsidered its position and filed a motion stating that it no longer opposed the limited relief that Davis was seeking in his petition. Because the Seventh Circuit does not issue writs, it vacated the judgment and remanded for additional consideration of whether the proposed resolution is appropriate. Counsel for respondent indicates that she has discussed the issue with opposing counsel and that petitioner joins in the motion. Having reviewed the motion and the underlying documents on file, the court will grant the respondent's motion for conditional writ with respect to the administrative appeal and deny Davis's remaining claim.

At issue is counsel's failure to file an administrative appeal or otherwise protect Davis's right to appeal. Respondent concedes that "based on the principles of due process and fundamental fairness, revocation violated Davis's constitutional rights when counsel effectively withdrew the day before Davis's administrative appeal was due without

preserving Davis's right to appeal that decision, particularly given that Davis is illiterate and mentally ill." (Doc. 77 at 3.) Davis did not identify for this court any issue that would have been raised in an administrative appeal. Hence, this court relied on Attorney Spansail's letter to the Wisconsin Supreme Court indicating that Davis had decided to file his own appeal and had terminated his representation. Davis's Seventh Circuit brief identified new issues that he believes could be presented on de novo review before the Wisconsin Division of Hearings. For that reason, respondent no longer opposes the requested relief. Now, therefore,

IT IS ORDERED that respondent's unopposed motion for order granting conditional writ (Doc. 77) is granted. The 2006 revocation decision is vacated and Davis shall be released on parole unless, within 60 days of the date of this order, the Wisconsin Division of Hearings and Appeals affords Davis the opportunity to initiate administrative review of the 2006 revocation decision.

IT IS FURTHER ORDERED that Davis, with the assistance of counsel, shall submit an administrative appeal with Wisconsin's Division of Hearings and Appeals. The Division will hear and decide that appeal as it would with any other timely filed administrative appeal. If Davis fails to seek an administrative appeal within sixty days of the date of this court's order, he will have forfeited the relief and no writ shall issue. If Davis seeks administrative review within the time period and the Division of Hearings and Appeals reviews the revocation decision in accordance with its standard procedures in Wis. Admin. Code HA 2.05(9) for a timely administrative appeal, no writ shall issue. However, if Davis timely files the appeal and the Division refuses to consider the merits on appeal as it would with any other timely filed administrative appeal, the writ shall issue.

IT IS FURTHER ORDERED that the remaining ineffective assistance of counsel claim regarding the failure to request a preliminary hearing is denied for reasons set forth in the court's March 30, 2015, order.

Dated at Milwaukee, Wisconsin, this 13th day of April, 2016.

BY THE COURT

/s/ C.N. Clevert, Jr.
C.N. CLEVERT, JR.
U.S. DISTRICT JUDGE